peace,[15] for a multiplicity of suits is likely to cause inconvenience to the state. It is curious that in New York, where judicial interference with taxes is usually discountenanced,[16] a bill of interpleader should be allowed in tax cases.[17] The Massachusetts court, which is one of the firmest adherents of the principle of not interfering with the collection of taxes, and has denied an injunction in a case involving multiplicity of suits,[18] is amply justified in allowing public policy to override the jurisdiction of equity in the case of interpleader.

CONSTITUTIONALITY OF DISCRIMINATIONS ON THE PARTY-COLUMN FORM OF BALLOT.[1] — A recent case held unconstitutional an amendment of the New York Election Law[2] providing that "if any person shall have been nominated by more than one political party . . . for the same office, his name shall be printed but once upon the ballot"; and in the party column where his name is not printed shall be printed "see —— column";[3] and that to vote a "straight ticket" on such party column a mark shall be placed not only at the head of the column but also opposite the place where such candidate's name is actually printed.[4] *In the Matter of Hopper*, 46 N. Y. L. J. 221 (N. Y. Ct. App., Oct., 1911).[5]

The New York Constitution provides that every male citizen of twenty-one shall vote at all elections;[6] that no one shall be disfranchised;[7] and that elections "shall be by ballot or by such other method as may be prescribed by law provided that secrecy in voting be preserved."[8] But there is no provision that all elections shall be "free and equal."[9] The New York Court of Appeals, however, based their decision on the ground that such a provision could be implied, and that this law infringed this constitutional right of the electors. The court reasoned that

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[15] This view is taken in Rhode Island. Compare the case cited in note 2 with McTwiggan *v.* Hunter, 18 R. I. 776, 30 Atl. 851.

[16] Merchants National Bank *v.* Mayor of New York, 172 N. Y. 35, 64 N. E. 756.

[17] See note 1, *supra*.

[18] See note 10, *supra*.

[1] Three types of the Australian ballot seem to be in use in the United States: the so-called Massachusetts form on which the names of the candidates for an office are placed under the name of the office, followed by a designation of the party or parties by which the candidate is nominated, *cf.* Sawin *v.* Pease, 6 Wyo. 91, 42 Pac. 750; the "party-column" form, in use in New York; and a hybrid form, like that used in Colorado. COLO. REV. STAT., 1908, §§ 2235, 2236. A ballot similar to the last was declared unconstitutional in California. Eaton *v.* Brown, 96 Cal. 371, 31 Pac. 250.

[2] N. Y. LAWS OF 1911, c. 649, § 331.

[3] This regulation could hardly be defended on the ground that it saved printing or space on the ballot.

[4] The Supreme Court, Special Term, held the law to be unconstitutional. 45 N. Y. L. J. 2401. The Appellate Division reversed this decision. 46 N. Y. L. J. 1. This was in turn reversed by the Court of Appeals.

[5] *Cf.* Murphy *v.* Curry, 137 Cal. 479, 70 Pac. 461. But *cf.* State *ex rel.* Runge *v.* Anderson, 100 Wis. 523, 76 N. W. 482; State *ex rel.* Bateman *v.* Bode, 55 Oh. St. 224, 45 N. E. 195; Todd *v.* Board of Election Commissioners, 104 Mich. 474, 62 N. W. 564, 64 N. W. 496. Since the constitutional provisions as well as the statutes are dissimilar, the cases are not exactly in point.

[6] N. Y. CONST., Art. II, § 1.

[7] N. Y. CONST., Art. I, § 1.

[8] N. Y. CONST., Art. II, § 5.

[9] Many state constitutions so provide. See PA. CONST., Art. I, § 5; MASS. BILL OF RIGHTS, Part I, § 9; ILL. CONST., Art. II, § 18.

there were precedents for implying restrictions into a constitution;[10] that the New York Constitution of 1777 had spoken of the "equal freedom of the people" as regards voting; and that therefore under all the circumstances the spirit of the present constitution was that elections should be free and equal.

But a state constitution, unlike the federal Constitution, is not a grant of law-making power, but a restriction on the law-making power of the people through their legislature. And much stronger reasons must exist to justify an implication of a restriction on the law-making power, than are necessary to justify an implied grant of such power. In the light, therefore, of the words of the New York Constitution that elections "shall be by ballot or by such other method as may be prescribed by law provided that secrecy in voting be preserved," it is difficult to see how the power of the legislature over the rights of electors may be held to be limited by anything except the express constitutional restriction that no male citizen over twenty-one shall be disfranchised and that secret voting be retained.[11]

It may be suggested, however, that the law is unconstitutional from another point of view;[12] namely, as an impairment of the right of a person to hold office. The New York Constitution, after stating a form of oath for holders of office, provides that "no other oath, declaration or test shall be required as a qualification for any office of public trust." [13] A recent New York decision held that to prohibit the nomination by one party of a candidate already nominated by another party was unconstitutional.[14] The law under discussion in effect provides that, while a candidate already nominated by one party may be nominated by another party, if so nominated he must be voted for by a special mark. This requirement obviously raises a possibility that electors voting straight tickets, for parties in which a particular candidate is named only by a blank, may fail, from forgetfulness or other reason, to vote for that candidate; and, in thus unnecessarily lessening his chances for election, it might be held to infringe his right to be subject to no other test of qualification for public office than that provided by the constitution.[15]

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[10] "Our constitution has never expressly forbidden the taking of private property for private use, but only prescribes that 'private property shall not be taken for public use without compensation.' Yet the courts early held that this necessarily excluded the right to take such property for private use, with or without compensation." *Per* Cullen, C. J., in the Court of Appeals.

[11] See cases cited in note 5. The legislature may restrict representation on the ballot to parties that received a certain percentage of the total vote cast at the last election. State *ex rel.* Plimmer *v.* Poston, 58 Oh. St. 620, 51 N. E. 150. But the elector has the power to write the name of a candidate on the ballot. Lamar *v.* Dillon, 32 Fla. 545, 14 So. 383. *Contra*, State *ex rel.* Mize *v.* McElroy, 44 La. Ann. 796, 11 So. 133. Under the Massachusetts form the printing of a candidate's name more than once may be forbidden. State *ex rel.* Sturdevant *v.* Allen, 43 Neb. 651, 62 N. W. 35. But a statute that actually disfranchises constitutionally qualified electors under the guise of regulation is void. Monroe *v.* Collins, 17 Oh. St. 665. It can hardly be maintained that the statute in the principal case has this effect.

[12] This view was expressed in the dissenting opinion to the judgment of the Appellate Division that the law is constitutional.

[13] N. Y. CONST., Art. XIII, § 1.

[14] In the Matter of Callahan, 200 N. Y. 59, 93 N. E. 262.

[15] *Cf.* Dapper *v.* Smith, 138 Mich. 104, 101 N. W. 60.